IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 811 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

ABDUL AJIJ ALIAS AJIT ABDUL SAFUR SHAIKH

Versus

COMMISSIONER OF POLICE

Appearance:

1. Special Civil Application No. 811 of 2002

MS DR KACHHAVAH for Petitioner No. 1

MR KAMLESH KACHHAVAH for Petitioner No. 1

MR D.P. JOSHI, AGP for Respondent State

CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 18/02/2002

ORAL JUDGEMENT

The petitioner came to be detained by virtue of an order dated 8.10.2001 passed by the Commissioner of Police,

Baroda City, Baroda in exercise of power under Section 3 of the PASA Act. The petitioner seeks to challenge the said order by this petition under Article 226 of the of Constitution of India.

2. The grounds of detention indicate that the petitioner has been branded as a boot-legger. The detaining authority has considered two registered offences against the detenu under the Bombay Prohibition Act. The detaining authority has also considered statements of three anonymous witnesses and have come to the conclusion that the activity of the detenu is anti-social and detrimental to public health and public order.

3. Learned Counsel for the petitioner submitted that a representation was made on behalf of the detenu on 7.1.2002, which was despatched on 8.1.2002 and was received by the Home Secretary on 9.1.2002. The communication dated 18.1.2002 addressed to the detenu, which is produced on record by the learned Counsel for the petitioner, indicates that the same was rejected by the Government on 17.1.2002. The representation therefore remained with the Government from 9.1.2002 to 17.1.2002 and this has affected the right of the detenu.

4. Learned Assistant Government Pleader Mr. D.P. Joshi has opposed to this petition. An attempt is made by learned AGP to explain how this time was consumed. He submitted that 12th, 13th and 14th of January, 2002 were holidays, but even then he was not able to explain as to what was done on 10th, 11th, 15th and 16th January, 2002 excepting that the file travelled from one table to another. He submitted that the representation which was received on 9th January, 2002 came to the concerned Branch on 11th January, 2002 and on that day note was prepared and on 15.1.2002, Section Officer approved the notes and the file was sent to Additional Secretary, Law and Order and on 17th January, ACS Home Department approved the notes. This also does not explain as to what happened on 10th of January, 2002. Why a representation which was received by the office of the Home Secretary on 9.1.2002 took two days to reach the concerned Department on 11.1.2002, is unexplained.

5. The apex Court has disapproved of this sluggish movement of files in cases involving curtailment of liberty of individuals by exercise of powers under such detention laws. The delay in considering the representation has affected the right of the detenu of

making an effective representation under Art. 22(5) of the Constitution of India. This Court is therefore not inclined to accept the explanation tendered by the learned AGP. The petition therefore, deserves to be allowed.

6. The petition is therefore, allowed. Order of detention dated 8.10.2001 passed by the Commissioner of Police, Baroda City is quashed and set aside. Detenu Abdul Ajij Ajit Abdulsafur Shaikh be released from detention forthwith, if not required in any other case. Rule made absolute. No costs. Direct service permitted.

(A.L.Dave,J.)

*/Mohandas